

Morgan Lewis

Tamar E. Finn

Partner

+1.202.373.6117

tamar.finn@morganlewis.com

August 25, 2016

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington, DC 20554

Re: WC Docket No. 16-143, WC Docket No. 15-247, WC Docket No. 05-25;
RM-10593, Notice of Ex Parte Communication

Dear Secretary Dortch,

On August 23, 2016, James Butman, Group President of TDS Telecommunications Corporation ("TDS"), Matthew Loch, Vice President of Sales of TDS, Steve Pitterle of TDS Metrocom, LLC ("TDS CLEC") and the undersigned met with Matthew DelNero, Chief Wireline Competition Bureau ("WCB"), Deena Shetler, Associate Bureau Chief WCB and William Dever, Office of General Counsel. The TDS participants joined by teleconference.

TDS CLEC explained that it participated in developing the Verizon-INCOMPAS framework and supports that framework together with a strong wholesale-retail rule. TDS CLEC asked the Commission to make clear that the Ethernet Benchmark rate from the carrier hand-off point to the end user includes the Network to Network Interface ("NNI"), loop, Ethernet Virtual Circuits ("EVCs"), User to Network Interface ("UNI") and any additional fiber build required for "near net" customers (*i.e.* up to 1000 feet). One RBOC does not follow the standard industry practice of including some amount of ordinary construction in its standard rate, charging higher monthly recurring rates for service to near-net buildings. Therefore the Commission should make clear that an ILEC cannot avoid the Benchmark by charging a higher monthly recurring rate or special construction¹ when the building is near the RBOC's fiber network but not yet connected.

TDS CLEC reviewed the Ethernet benchmark calculations for AT&T and CenturyLink based on the Verizon-INCOMPAS framework. TDS CLEC's calculations followed that framework by

¹ Special construction charges should only be applied in the most costly circumstances (*e.g.*, railroad crossings, major obstructions to construction, etc.).

Morgan, Lewis & Bockius LLP

2020 K Street, NW
Washington, DC 20006-1806
United States

☎ +1.202.373.6000
☎ +1.202.739.3001

adding the four DS-1 rate elements and reducing that sum by the one-time adjustment to derive the DS-1 benchmark for the lowest Ethernet speed (2 Mbps). TDS CLEC used AT&T's and CenturyLink's website rack rates for a 36 month term, highest QoS and typical speeds (10MB, 20MB, 50MB, 100 Mb and 1G) to show the applicable price curves under the Verizon-INCOMPAS framework.

TDS CLEC explained that AT&T's price squeeze practices continue and urged the FCC to adopt a wholesale-retail rule to make clear the wholesale rate for an ILEC BDS service that is the same or similar as a BDS service in an ILEC's retail bundle should always be less than, and never exceed, the price of the retail bundle. Using Metro Ethernet Forum diagrams to illustrate, TDS CLEC explained that AT&T's publicly posted bid prices for 20 and 50 Mbps Ethernet Internet services (carrier's facilities) were significantly lower than the price AT&T offers TDS CLEC for the Ethernet loop portion (partner facilities) of the retail service AT&T bid to provide Outagamie County, Wisconsin for a two-year term. TDS CLEC reiterated that in a normally functioning market, a network operator would maximize use of its network through both retail and wholesale sales channels. For example, TDS CLEC provided commissions to sales agents for retail sales and sells T-1s to carrier customers at a rate that is less than the retail T-1 service it offers to end users but still enables TDS CLEC to make a profit on its channel partner and wholesale sales.

TDS CLEC has anecdotal evidence of other discriminatory pricing behavior by ILECs, including offering on-net rates for near-net services to retail customers and other wholesale customers but not to TDS CLEC. Without an expedited enforcement process, however, it could take over a year for TDS CLEC to obtain relief, by which time the potential customer and many other business opportunities would be lost. For example, TDS CLEC explained that out of the last 70 bids it submitted that included an ILEC wholesale Ethernet loop, it did not win a single bid.

In addition to an expedited enforcement regime, TDS CLEC asked the FCC to require an officer of the RBOC to provide an annual certification that the wholesale rates charged to other carriers are lower than the retail rates offered for the same or similar services by the amount of costs avoided. Such a certification should include details sufficient to show that the RBOC offers a wholesale rate that recognizes avoided sales/marketing costs by incorporating a price differential at least as favorable as the RBOC's channel partner commissions and that the RBOC has compared its wholesale rates to similar inputs in bundled services where the bundled price allocated to the Ethernet input is consistent with allocation methodologies the RBOC uses for universal service, tax, or other reporting purposes.

The attached handouts were provided to the meeting participants.

Respectfully Submitted,

/s/ Tamar E. Finn

Tamar E. Finn
Danielle Burt

Counsel for TDS Metrocom, LLC

Attachments

Marlene H. Dortch, Secretary
August 25, 2016
Page 3

cc: (Via E-Mail)
Matthew DelNero
Deena Shetler
William Dever

**Ethernet Benchmark Calculations Based on the Incompas/VZ Joint Letter to FCC
Using the AT&T DS-1 TDM Rates as Starting Point for 2MB Ethernet
and AT&T Web Based Ethernet Bandwidth Price Relationships**

Using AT&T Special Access Tariff most rural Zone, 36 Month rate for DS-1 TDM circuit

Includes four DS-1 elements (components) to define AT&T's current DS-1 TDM rate

Channel Termination (same as AT&T Tariff Local Distribution Channel)
Fixed Mileage
Variable Mileage 5 Miles based on Joint letter
1/20 of a 3:1 Multiplex unit rate

AT&T Tariff DS-1 Components	Equivalent	AT&T Rates from SPA Tariff
<u>Zone 5 36 Month term</u>		
Local Distribution Channel		\$141
Channel Mileage Termination		\$45
Channel Mileage at 5 Miles		\$71.50
1/20 of a 3:1 Mux charge		\$27.00
Total		\$284.50

Efficiency Factor (15% + 4.5% -2.0% Inflation) Per Joint Letter

Apply a 17.5% discount to the DS-1 rate total

Applying 17.5% to AT&T total yields \$284.50 x .825 **\$234.71** For a 1.5 Mb rate that is assumed to be for 2Mb Ethernet **or \$235**

Using AT&T Guidebook Based (Rack Rate) Price Curve for Higher Ethernet Bandwidths Yields:

Quality of Service = Real Time

Term Period = 36 Months

100 MB Port rate = \$390

1000Mb Port rate = \$600

2 Mb start rate per DS-1 Calculations = \$235

Price Curve From AT&T Guidebook

Speed (Mb)	Port	CIR	Total	Ratio of 2Mb to Speed Listed
2Mb	\$390	\$312	\$702	1.00
10 Mb	\$390	\$546	\$936	1.33
20Mb	\$390	\$708	\$1,098	1.56
50Mb	\$390	\$792	\$1,182	1.68
100Mb	\$390	\$900	\$1,290	1.83
1G	\$600	\$1,914	\$2,514	3.58

Ethernet Benchmark Calculations Based on the Incompas/VZ Joint Letter to FCC
using the CL DS-1 TDM Rates as Starting Point for 2MB Ethernet
and CL Web Based Ethernet Bandwidth Price Relationships

Using CL Special Access Tariff most rural Zone, 36 Month rate for DS-1 TDM circuit

Includes four DS-1 elements (components) to define CL's current DS-1 TDM rate

Channel Termination
Fixed Mileage
Variable Mileage 5 Miles based on Joint letter
1/20 of a 3:1 Multiplex unit rate

CL Tariff DS-1 Components	Equivalent	CL Rates from SPA Tariff
<u>Zone 5 36 Month term</u>		
Channel Termination		\$123.98
Fixed Mileage		\$59.50
Per Mile @ 5 Miles	\$7.65 per mile	\$38.25
1/20 of a 3:1 Mux charge	\$270 3: 1 Mux	\$13.50
Total		\$235.23

Efficiency Factor (15% + 4.5% -2.0% inflation)

Apply a 17.5% discount to the DS-1 rate total

Applying 17.5% to CL total yields **\$194.06** For a 1.5 Mb rate that is assumed to be for 2Mb Ethernet or **\$194**

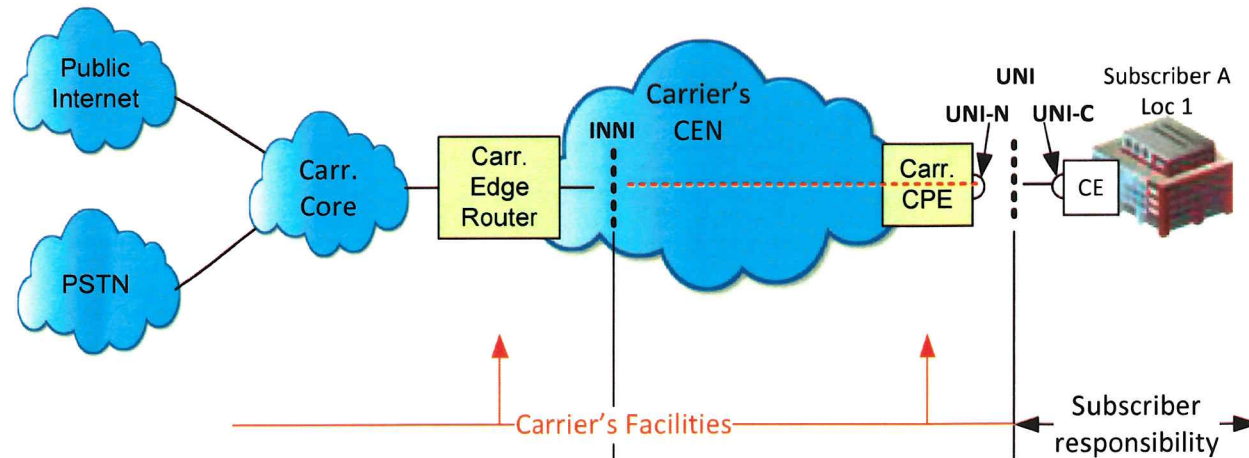
Using CenturyLink Rates and Services MOE Price Curve from its web site for higher Ethernet Bandwidths yields:

Term Period = 36 Months

2 Mb start Rate per DS-1 Calculations = \$194

Price Curve From CenturyLink Website			Total	Ethernet Price Curve	
Speed (Mb)	CIR	EVC Charge		Ratio of 2Mb to Speed Listed	
2Mb	\$307	\$50	\$357	1.00	
10 Mb	\$621	\$50	\$671	1.88	
20Mb	\$822	\$50	\$872	2.44	
50Mb	\$993	\$50	\$1,043	2.92	
100Mb	\$1,275	\$50	\$1,325	3.71	
1G	\$5,780	\$50	\$5,830	16.33	

Carrier's Retail VoIP and/or Internet Subscriber served entirely by their Ethernet Access Network:



Key:

CE – Customer Equipment (generic)

CPE – Customer Prem Equipment

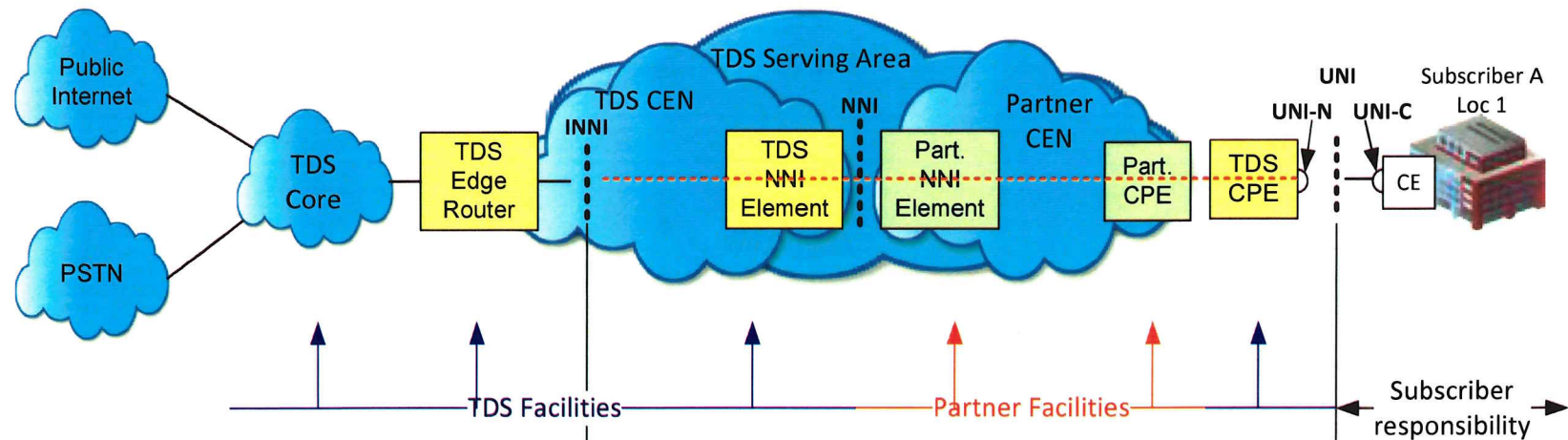
INNI – Internal Network-to-Network Interface

UNI – User-to-Network Interface

UNI-C – User-to-Network Interface (Customer side)

UNI-N – User-to-Network Interface (Network side)

TDS Retail VoIP and/or Internet Subscriber served in conjunction with an Ethernet Access Partner:



Key:

- CE – Customer Equipment (generic)
- CPE – Customer Prem Equipment
- INNI – Internal Network-to-Network Interface
- NNI – Network-to-Network Interface (generic)
- Partner CEN – Partner Carrier Ethernet Network
- TDS CEN – TDS Carrier Ethernet Network
- TDS Serving Area – The total footprint covered by combining the TDS CEN and a Partner CEN
- UNI – User-to-Network Interface
- UNI-C – User-to-Network Interface (Customer side)
- UNI-N – User-to-Network Interface (Network side)